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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,251	02/17/2004	Louis Patrone	91943.000092	1474
54600 7590 07/09/2009 MTI - INTELLECTUAL PROPERTY HARTER, SECREST & EMERY, LLP 1600 BAUSCH & LOMB PLACE ROCHESTER, NY 14604				
EXAMINER				
TORRES VELAZQUEZ, NORCA LIZ				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
07/09/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/780,251

Applicant(s)

PATRONE ET AL.

Examiner

Norca L. Torres-Velazquez

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-9 and 11-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,7-9,11,13-16,19,20 and 23-35 is/are rejected.
- 7) ☒ Claim(s) 6,12,17,18,21 and 22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Claims 4 and 10 have been canceled. Claims 5, 11, 16 and 20 have been amended. New claims 30-35 have been incorporated. No new matter was found.
2. The Examiner has carefully considered Applicant's amendments and accompanying remarks filed April 06, 2009. In view of Applicant's response, the previously set forth rejections have been modified below.

Response to Arguments

3. Applicant's arguments filed April 06, 2009 have been fully considered but they are not persuasive.
 - a. Remarks regarding independent claims 1 and 7 in which Applicants argue that the prior art of Achille does not disclose or suggest a wax containing a superabsorbent have been considered, however, it is the Examiner's position that Achille teaches similar mixture comprising the three components claimed in claims 1 and 7. The invention as claimed in claims 1 and 7 does not require specific amounts of the components, thus, the argument indication that waxes in the Achille reference are optional additives are moot as the claims fail to specify the wax content of the liquid water absorbing mixture.
 - b. Applicant's arguments with respect to claims 23-27 have been considered but are moot in view of the new ground(s) of rejection.
 - c. With regards to new claims 30-35, it is noted that it is the Examiner's position that the cellulosic or starch-graft copolymers described by the ACHILLE reference will

read on the presently claimed channelling agent and the Examiner takes the position that such materials will inherently increase the water permeability of the wax.

Allowable Subject Matter

4. Claims 6, 12, 17-18 and 21-22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
5. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach the product of the present invention comprising a superabsorbent, a wax and a channeling agent at the concentrations claimed in claims 6, 12, 17-18 and 21-22.

Claim Rejections - 35 USC § 102/103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. **Claims 1-3, 5, 7-9, 11-16 and 19-20 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over ACHILLE (US 2002/0039869 A1).**

ACHILLE discloses an extrudable thermoplastic superabsorbent polymer blend composition. (Abstract) The blend composition comprises: a superabsorbent polymer, a thermoplastic resin and optionally a surfactant. [0011] Among the preferred superabsorbent polymer are cellulosic or starch-graft copolymers and poly(acrylic acids). [0019] The reference further teaches that most preferred superabsorbent polymer are crosslinked, partially neutralized and/or surface treated. Neutralization with a basic substance such as sodium is preferred. [0020] The reference teaches that the amount of the superabsorbent polymer to be included in the

thermoplastic superabsorbent polymer blend composition will vary depending on factors such as the desired level of blocking, absorbing or stopping the migration of water and/or other fluids in the end use application, etc. [0021] The superabsorbent polymer is present in an amount equal to or greater than about 1 part per weight or even equal to or greater than about 20 parts per weight. [0022] The preferred thermoplastic resins are acrylic polymers, with polyacrylic acid (PAA). [0025] The thermoplastic resin is present in an amount equal to or greater than about 30 per weight. [0027] It is noted that the reference further teaches that the blend compositions contain at least one superabsorbent polymer, such blend composition may or may not be superabsorbent, depending upon the level and absorbency of the superabsorbent polymer in the blend composition and the availability of the superabsorbent polymer to aqueous media. [0029] ACHILLE further teaches that the blends may further comprise additional additives such as waxes. [0031] The blend composition are suited for use in articles such as monolayer films, sheets, fibers, among others. (Abstract)

It is the Examiner's interpretation that the polyacrylic acid resins of the reference read on the claimed superabsorbent and the cellulosic or starch-graft copolymers described by the reference will read on the presently claimed channelling agent. The reference teaches the use of waxes in a blend.

Although ACHILLE does not explicitly teach the claimed feature that the channeling agent "conducts liquid water through the wax to the superabsorbent but does not conduct water vapor" it is reasonable to presume that this property is inherent to the composition of ACHILLE. Support for said presumption is found in the use of like materials (i.e. the reference uses a similar blend and teaches that the amount of the amount of the superabsorbent polymer will vary, for

example, on the desired level of blocking, absorbing or stopping the migration of water and/or fluids in the end use application, etc.). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of conducting liquid water through the wax to the superabsorbent but does not conduct water vapor would obviously have been present once the ACHILLE product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection made above under 35 USC 102.

Claim Rejections - 35 USC § 103

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 23-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over ACHILLE as applied above, and further in view of HAMILTON (US 6562192).

ACHILLE is silent to having the superabsorbent encapsulated in the wax.

HAMILTON shows that it was known in the art of absorbent materials and articles that including a wax coating on absorbent fibers or ‘nits’ improved the particle to particle interaction of such materials. (Refer to Col. 21, lines 37 to Col. 22, line 34 and claims 3, 6 and 11). Thus, it would have been obvious to one having ordinary skill in the art to provide the superabsorbent material of ACHILLE with a wax coating motivated by the desire of ensuring that the material would have enhanced processing functions. A reference may be understood by the artisan as suggesting a solution to a problem that the reference does not discuss. See KSR, 137 S. Ct. at 1742, 82 USPQ2d at 1397 “Common sense teaches... that familiar items may have obvious uses beyond their primary purposes, and in any cases a person of ordinary skill will be able to fit the

teachings of multiple patents together like pieces of a puzzle. ... A person of ordinary skill is also a person of ordinary creativity, not an automaton.”).

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-5:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Tarazano can be reached on 571-272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Norca L. Torres-Velazquez/
Primary Examiner, Art Unit 1794

July 3, 2009